

**HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI**

WRIT PETITION No:25776 OF 2007

Dated:04.12.2007

Between:

M/s. Sri Venkateswara Balaji Constructions,
D.No.954/1, Near Bus Stand,
Buchireddypalem, Nellore District,
Rep., by its Managing Partner
Ch. Balaji.

..Petitioner

And

1. Commercial Tax Officer, Kavali and others.

..Respondents.

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**HONOURABLE MRS. JUSTICE T.MEENA KUMARI
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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to grant stay of collection of the disputed tax for the assessment year 2001-2002 under the APGST Act arising in pursuance of the stay rejection orders of the 3rd respondent dated 9.10.2007 passed in CCT's Ref.No.OV(4)/666/2007 pending disposal of the appeal before the Sales Tax Appellate Tribunal.

The main grievance of the petitioner is that against the revised assessment order, the petitioner filed an appeal before the Sales Tax Appellate Tribunal. An application seeking stay of collection of the balance disputed tax was moved before the 3rd respondent, but the 3rd respondent rejected the stay application. Aggrieved by the same, the present writ petition has been preferred.

Heard the learned Counsel appearing for the petitioner and the learned Government Pleader for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that an appeal is pending before the Sales Tax Appellate Tribunal as to the revised assessment tax and in such a situation, rejection of stay application is unjustified and that if the relief as to the stay of the

proceedings is not entertained and if the recovery of the disputed tax in question is effected during the pendency of the appeal before the Tribunal, the very purpose of filing the said appeal, which is a statutory remedy that is available to the aggrieved party, would be defeated.

In the facts and circumstances of the case and in view of the pendency of the appeal before the Tribunal, without expressing any opinion on the merits of the case, We feel it a fit case wherein stay can be granted, but subject to imposition of certain conditions.

Accordingly, there shall be stay of recovery of disputed tax till the disposal of the appeal pending before the Sales Tax Appellate Tribunal subject to the condition of the petitioner depositing 50% of the disputed tax within a period of six (6) weeks from today. However, it is made clear that the amount paid if any, shall be given credit to the above stipulated sum.

Subject to the above direction, the writ petition is disposed of.

No order as to costs.

Justice T. Meena Kumari

Justice G. Rohini

Date: 4th December, 2007
Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

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(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

04/12/2007